

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SLOAN VALVE COMPANY,)	
)	
Plaintiff,)	Case No. 10-cv-00204
vs.)	
)	Judge Amy J. St. Eve
ZURN INDUSTRIES, INC., and ZURN)	
INDUSTRIES, LLC,)	Magistrate Judge Sidney I. Schenkier
)	
Defendants.)	
)	

**JOINT REPORT RELATING TO THE
DAUBERT HEARING FOR MICHAEL C. THUMA**

As required by the Court's written procedures, the parties hereby provide the following Joint Report Relating to the *Daubert* Hearing for Michael C. Thuma. Mr. Thuma's hearing is slated for September 4, 2013 at 10:30 AM.

WITNESSES

The parties agree that Mr. Thuma is the only witness that will be called.

ORDER OF PRESENTATION

The parties respectfully request to present opening remarks. Defendants, as the movant, will go first in providing opening remarks. Each side will have a maximum of ten (10) minutes for opening remarks, without any rebuttal. Defendants propose that Mr. Thuma not be present for the opening remarks, per FRE 615.

Plaintiff will then present the direct examination of the expert at issue, followed by Defendants' cross-examination. Each side will have the opportunity to conduct **one** re-direct examination or re-cross examination.

For the purpose of these hearings only, and without conceding the relevance of any of the exhibits beyond this hearing, the parties agree that the following non-caselaw exhibits designated herein are admissible without objection for the limited purpose of the Daubert hearing on Michael C. Thuma, except where otherwise noted. The Parties reserve the right to object to admissibility of any such exhibits and deposition testimony sought to be entered into evidence at trial. Exhibits shall be moved into evidence at the conclusion of the examinations of Mr. Thuma during the hearing.

Plaintiff does not think that closing remarks are necessary, but if they are, then closing remarks should be limited to five (5) minutes with Defendants going first. Defendants propose that each side be allotted at least five (5) minutes for closing arguments with the Plaintiff going first.

ISSUES TO ADDRESS PRIOR TO ARGUMENT

The parties anticipate that the internal Zurn manufacturing documents and emails on the Exhibit List will have to be filed under seal if/when entered as exhibits into the record. The parties also agree that no confidential Zurn manufacturing documents or emails will be published in the court room (e.g. via PowerPoint or overhead) if a Sloan representative is present. The parties anticipate that the Court's standard practice of providing time for redactions before the release of transcripts will suffice to protect any confidential testimony elicited at the hearing.

The parties agree that PowerPoint® or a similar presentation aid may be used during opening and closing arguments, and that such materials may be provided to the Court in hard copy and/or electronic copy. Objections are hereby reserved for any other demonstrative aids or other evidence that any party may seek to offer or otherwise reference during the hearing.

AGREED EXHIBIT LIST*

EXHIBIT	SOURCE	DESCRIPTION OF DOCUMENT
1.	Report	Expert Report dated January 28, 2013 (Dkt. 560-1)
2.	Report	Exhibit A – Curriculum Vitae (Dkt. 560-1)
3.	Report (<i>Materials Considered</i>)	Amended Complaint (<i>Redacted</i>) (Dkt. 197)
4.	Report (<i>Materials Considered</i>)	Supplemental Complaint (Dkt. 204)
5.	Report (<i>Materials Considered</i>)	Zurn's Supplemental Responses to Sloan's Interrogatories Nos. 1-10
6.	Report (<i>Materials Considered</i>)	Zurn's Third Supplemental Responses to Sloan's Interrogatories Nos. 1-10.
7.	Report (<i>Materials Considered</i>)	Zurn's documents bearing production numbers ZP000018-ZP000026 .
8.	Report (<i>Materials Considered</i>)	ZP002731-33 - Email from Mike Funari to Al Becker and cc: to Frank Schaetzke (dated June 24, 2005) re we designed dual flush handle today during lunch hour (<i>with Sloan Dual Flush Valve.jpg and Optima ETF-80_Rev1a.pdf attached</i>)
9.	Report (<i>Materials Considered</i>)	ZP002789 – Email from Mike Funari to Frank Lastowski, Al Becker, and Craig Wehr and cc: to Frank Schaetzke (dated July 21, 2005) re “...tools on order that should allow us to complete our design.”
10.	Report (<i>Materials Considered</i>)	ZP005450 – Zurn Operating Method Sheet re Dual Flush Retainer Machining Process (Release Dated: 7/15/2010)
11.	Report (<i>Materials Considered</i>)	ZP224341 - Email from Michael Funari to Anna Rosenstein (addressed to Paul Reznick) with cc: to Al Becker and Robert Saadi re the Sloan Dual Flush Handle (dated November 14, 20015)
12.	Report (<i>Materials Considered</i>)	a specimen of a Zurn dual flush handle (Model No. P6000-ADA-DF) (marked by Zurn with Bates No. ZP06045), including its retainer.

13.	Report (<i>Materials Considered</i>)	a specimen of a Sloan UPPERCUT® dual flush handle, including its bushing
14.	<i>Daubert</i> Motion	<i>Deposition of Randy Foltz – 30(b)(6)(December 3, 2010)(Dkt. 506-3)</i>
15.	<i>Daubert</i> Motion	<i>Deposition of Philip Painter – 30(b)(6) (October 12, 2012)(Dkt. 506-4)</i>
16.	<i>Daubert</i> Motion	<i>Goldberg v. 401 North Wabash Venture, LLC</i> , No. 09 C 6455, 2013 WL 212912 at *2
17.	<i>Daubert</i> Motion	<i>Bone Care Int’l LLC v. Pentech Pharms., Inc.</i> , Case No. 08-CV-1083, 2010 U.S. Dist. LEXIS 105118, (N.D. Ill. Oct. 1, 2010)
18.	<i>Daubert</i> Motion	<i>Se-Kure Controls, Inc. v. Diam USA, Inc.</i> , No. 06 C 4857, 2009 US Dist. LEXIS 1648
19.	<i>Daubert</i> Motion	<i>Isaacs v. Hill’s Pet Nutrition, Inc.</i> , No. 1:03-cv-0348-LJM-JMS, 2008 WL 820273
20.	<i>Daubert</i> Motion	<i>Jordan v. City of Chicago</i> , No. 08 C 6902, 2012 WL 88158
21.	<i>Daubert</i> Motion	<i>Johnson v. Wyeth LLC</i> , No. 10-c-2690, 2012 WL 1204081
22.	<i>Daubert</i> Motion	<i>In re Paine</i> , Case No. 06 C3173, 2010 U.S. Dist LEXIS 16978
23.	<i>Daubert</i> Motion	<i>Keen v. Nestle Waters North America, Inc.</i> , No. 1:10-cv-1075-LJM-TAB, 2012 WL 1365444
24.	<i>Daubert</i> Motion	<i>Willis v. Sears Holding Management Corporation</i> , No. 10 C. 5926, 2012 WL 3915333
25.	Plaintiff’s Response	<i>Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs.</i> , 2009 U.S. Dist. LEXIS 131813 (D. Del. Mar. 29, 2009)
26.	Plaintiff’s Response	<i>Liquid Dynamics Corp. v. Vaughn Co.</i> , 2004 U.S. Dist. LEXIS 29992 (N.D. Ill. Sept. 30, 2004)
27.	Deposition	Deposition Transcript dated May 6, 2013 (Dkt. 560-2)
28.	Plaintiff’s Response	ZP002716-18 – Email from Frank Lastowski to Craig Wehr, Al Becker, Pat McQuillan, Mike Funari, Jonathan Huddle (dated May 24, 2005)

29.	Plaintiff's Response	ZP002737 – Email from Frank Lastowski to Mike Funari, Jim Bauer, Delois Barryman, Marc Block (dated December 13, 2005)
30.	Plaintiff's Response	ZP002746-48 – Email from Frank Schaetzke to Zurn-Area Managers, Craig Wehr, Al Becker, Frank Lastowski (dated June 24, 2005)
31.	Plaintiff's Response	ZP002752-54 – Email from Frank Schaetzke to Craig Wehr, Frank Lastowski, Al Becker (dated June 24, 2005)
32.	Plaintiff's Response	ZP002824 – Email from Derek Borrell to Jonathan Huddle, Al Becker, Craig Wehr, Frank Lastowski, Mike Funari (dated August 19, 2005)
33.	Plaintiff's Response	ZP003386-88 – Email from Al Becker to Frank Schaetzke, Craig Wehr, Frank Lastowski (dated June 24, 2005)
34.	Plaintiff's Response	ZP003410-11 – Email from Al Becker to Frank Lastowski, Mike Funari, Jerry Markijohn, Craig Wehr (dated August 11, 2005)

**Previously, the parties were instructed that the Court does not want the exhibits refiled at this time, and that all the parties need to file is this joint report. The parties were informed that if the Court needs anything further, the Court will let the parties know. We shall follow these instructions for the JOINT REPORT RELATING TO THE DAUBERT HEARING FOR MICHAEL C. THUMA*

Date: August 28, 2013

AGREED BY:

The Webb Law Firm PC

/s/ John W. McIlvaine

John W. McIlvaine (admitted *pro hac vice*)
Thomas C. Wolski (admitted *pro hac vice*)
Cecilia R. Dickson (admitted *pro hac vice*)
Steven M. Johnston (admitted *pro hac vice*)

THE WEBB LAW FIRM, P.C.

One Gateway Center
420 Ft. Duquesne Blvd., Suite 1200
Pittsburgh, PA 15222
Telephone: (412) 471-8815
Facsimile: (412) 471-4094

Nicole M. Murray
nicole.murray@quarles.com
John E. Conour
john.conour@quarles.com

QUARLES & BRADY LLP

300 N. LaSalle Street
Suite 4000
Chicago, IL 60654
Telephone: (312) 715-5000
Facsimile: (312) 632-1780

David R. Cross
david.cross@quarles.com
Patrick J. Murphy
patrick.murphy@quarles.com
QUARLES & BRADY LLP
411 E. Wisconsin Avenue, Suite 2040
Milwaukee, WI 53202
Telephone: (414) 277-5000
Facsimile: (414) 271-3552
Attorney for Defendants, Zurn Industries, Inc.
and Zurn Industries, LLC

Foley & Lardner LLP

/s/ Scott R. Kaspar

Jason A. Berta (6295888)
Scott R. Kaspar (6284921)
Lisa M. Noller (6229957)
Daniel W. Werly (6301164)

FOLEY & LARDNER LLP

321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
Telephone: 312.832.4500
Facsimile: 312.832.4700

Richard S. Florsheim (admitted *pro hac vice*)

FOLEY & LARDNER LLP

777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Telephone: 414.271.2400
Facsimile: 414.297.4900

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2013, I caused to be filed electronically the foregoing **JOINT REPORT RELATING TO THE *DAUBERT* HEARING FOR MICHAEL C. THUMA** with the Clerk of the Court using the CM/ECF system, which will send an electronic copy of the foregoing to counsel of record and constitutes service under Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ John W. McIlvaine
Attorney for Defendants, Zurn Industries,
Inc. and Zurn Industries, LLC